

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 1841 OF 2021

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Komorgram Jame Mosque, represented by its President
Alhaj Moulana Abdullah Mosta Hasan and others

... Petitioners

-Versus-

Md. Harunor Rashid (Harun) and others

... Opposite parties

None appears

... For the petitioners.

Ms. Lucky Ahamed, Advocate

... For the opposite party Nos.2(a)-

2(c).

Heard and Judgment on 20.06.2023

On an application under Section 115(4) of the Code of Civil Procedure at the instance of the defendants is directed against the judgment and order dated 17.08.2021 passed by the learned District Judge, Joypurhat in Civil Revision No.15 of 2020 dismissing the revision and affirming the judgment and order dated 05.10.2020 passed by the learned Senior Assistant Judge, Joypurhat Sadar in Other Class Suit No.211 of 2018 rejecting an application under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure for local investigation of the disputed property by appointing a survey knowing Advocate Commissioner.

Facts in short are that the opposite parties as plaintiffs instituted Other Class Suit No.211 of 2018 in the Court of Senior Assistant Judge, Sadar, Joypurhat for declaration that the compromise decree passed by the learned Senior Assistant Judge, Joypurhat in Other Class Suit

No.122 of 2018 on 12.08.2018 at the instance of the defendant Nos.1 and 2 who were plaintiffs of above suit is fraudulent, collusive, illegal and not binding upon the plaintiffs.

In above suit the defendants entered appearance and contested the suit by filing a written statement. Defendant Nos.3-7 filed a petitioner under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure on 17.07.2019 for performing local investigation of 38 decimal of land of C.S. Plot No.1380 and current Plot No.4059 for determination whether there were godown, office room, chicken shed, house, boiler and furnesh in the above land.

On consideration of facts and circumstances of the case and materials on record the learned Senior Assistant Judge rejected above petition vide Order dated 05.10.2020.

Being aggrieved by the above judgment and order of the learned Senior Assistant Judge above defendants preferred Civil Revision No.15 of 2020 to the District Judge, Joypurhat who on consideration of submissions of the learned Advocates for the respective parties and materials on record rejected above revision and affirmed the judgment and order passed by the learned Senior Assistant Judge.

Being aggrieved by above judgment and order passed by the learned District Judge above petitioners moved to this Court and obtained the Rule.

No one appears on behalf of the Petitioners when the Civil Revision was taken up for hearing although it appeared in the list for hearing today.

Ms. Lucky Ahamed, learned Advocate for the opposite party Nos.2(a)-2(c) submits that the opposite parties as plaintiffs instituted Other Class Suit No.211 of 2018 challenging the legality and propriety of the compromise decree obtained by the defendant Nos.1 and 2 in Title Suit No.122 of 2018 on 27.06.2018. The plaintiffs did not seek any relief with regard to the property covered by above impugned

compromise decree of the defendants. In this case the questions as to the title or possession or nature, feature or character of the suit land are not disputed and those are not disputed issues in this suit. As such the learned Judges of the Courts below have rightly held that the petition filed by the defendants under Order 26 Rule 9 of the Code of Civil Procedure for local investigation is irrelevant and unnecessary and the learned Judge has rightly rejected the same which calls for no interference.

I have considered the submissions made by the learned Advocate for the opposite parties and carefully examined the plaint of Other Class Suit No.211 of 2018, the petition submitted by the plaintiffs under Order 26 Rule 9 of the Code of Civil Procedure, the impugned judgment and order passed by the learned District Judge and other materials on record.

It turns out from the record that the opposite parties as plaintiffs instituted Other Class Suit No.211 of 2018 for only one relief for setting aside the compromise decree passed in Other Class Suit No.122 of 2018 on 12.08.2018. It is true that in the schedule of the plaint contains a schedule of the disputed property but no relief has been sought in respect of above property. Above description of the property has been provided for proper identification of the impugned compromise decree.

A petition for local investigation is generally submitted in a civil suit for identification of the disputed property or its location or for its measurement or for determination of market value or its annual profit or fixation of damage. In this suit there is no issue regarding identification or measurement a profit or damage for the disputed land.

In above view of the materials on record I am of the view that the learned Senior Assistant Judge had rightly rejected the petition for local investigation and the learned District Judge on correct appreciation of materials on record has rightly rejected the Civil Revision which calls for no interference.

I am unable to find any substance in this Civil Revision and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there is not order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER